

February 19, 2009

H 239. DISAPPROVE JORDAN LAKE RULES (=S 166). Filed 2/19/09. *TO DISAPPROVE THE JORDAN WATER SUPPLY NUTRIENT STRATEGY RULES.*

Substantively identical to S 166, filed 2/12/09.

Intro. by Allen, Gibson.

UNCODIFIED

May 5, 2009

H 239. RESTORE WATER QUALITY IN JORDAN RESERVOIR (NEW). Filed 2/19/09. House committee substitute to be digested in tomorrow's *Daily Bulletin*.

May 6, 2009

H 239. RESTORE WATER QUALITY IN JORDAN RESERVOIR (NEW). Filed 2/19/09. House committee substitute deletes entire contents of the 1st edition and replaces it with *AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF THE JORDAN WATERSHED IN ORDER TO RESTORE WATER QUALITY IN THE JORDAN RESERVOIR.*

Requires that the Environmental Management Commission (Commission) and the Department of Environment and Natural Resources (DENR) implement the Wastewater Discharge Rule 15A NCAC 02B .0270 adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on October 16, 2008, except that, notwithstanding sub-subdivision (6)(c) of the rule, each existing discharger with a permitted flow greater than or equal to .1 million gallons per day is required to limit its total nitrogen discharge to its active individual discharge allocation as defined or modified in the Wastewater Discharge Rule by 2016 (was, by 2014 in the existing rule). The Commission must adopt a replacement rule that implements a substantively identical nitrogen discharge requirement. Provides that rules adopted pursuant to Section 2 of the bill are not subject to GS 150B-21.9 through GS 150B-21.14. Provides that these adopted rules become effective as provided in GS 150B-21.3(b1) as though 10 or more written objections had been received.

Disapproves the Existing Development Rule 15A NCAC 02B .0266, as adopted by the Commission on May 8, 2008, and approved by the Rules Review Commission on November 20, 2008. Provides that references in the NC Administrative Code to this rule are deemed to refer to the equivalent provisions of this act. Requires DENR to maintain an ongoing program to monitor water quality in each arm of the Jordan Reservoir. Allows DENR to accept water quality sampling data from a monitoring program implemented by a local government or nonprofit organization if the data meets quality assurance standards established by DENR. Requires DENR to report the results to the Commission by March 1, 2014, with an updated report submitted every three years until the lake is no longer impaired by nutrient pollution.

Directs DENR to (1) require implementation of reasonable nutrient load reduction measures for existing development in each arm of the Jordan Lake Reservoir and (2) determine if nutrient load reduction measures are necessary in the subwatershed of the reservoir. Establishes an adaptive management program in two stages.

Stage 1 Adaptive Management Program to Control Nutrient Loading from Existing Development. Requires that Stage 1 adaptive management programs implemented by municipalities and counties located in whole or in part in the Jordan watershed meet the requirements set out in 40 CFR § 122.34 as applied by DENR in the NPDES General Permit for municipal storm sewer systems in effect on July 1, 2009. Specifies that a Stage 1 adaptive management program must include a program in (1) public education, (2) mapping, (3) identification and removal of illegal discharges, (4) identification of opportunities for retrofits and other projects to reduce nutrient loading from existing developed land, and (5) maintenance of best management practices implemented by the local government. Requires DENR to accept local government implementation of another stormwater program or programs meeting the standards set out in this section as satisfying one or more of the program requirements. Each local government must submit its Stage 1 adaptive plan by December 31, 2009, to the Commission for review and approval, with the Commission approving or disapproving the program within six months of the submission. Provides for a revision period, if necessary, and

requires the local government to begin implementation of the program within three months of the Commission's approval, with annual reporting on implementation to DENR.

Stage 2 Adaptive Management Program to Control Nutrient Loading from Existing Development. Requires that DENR submit a model Stage 2 adaptive management program to the Commission by December 31, 2014. Provides that the model program identify specific load reduction practices and programs and reduction credits associated with each practice and program. Requires DENR to consider the findings and recommendations of the Nutrient Sensitive Waters Scientific Advisory Board (established in this act) and comments submitted by municipalities and counties identified in 15A NCAC 02B .0262(7) (Jordan Water Supply Nutrient Strategy: Purpose and Scope). Provides for a revision process of the model plan, with a final model program approved by the Commission by December 31, 2015.

If the March 1, 2017, report or any subsequent monitoring report for an arm of the Jordan Reservoir shows that nutrient-related water-quality standards are not being met, the county or municipality must develop and implement a Stage 2 adaptive management program. Allows DENR to defer development and implementation of the program if it is determined that additional reductions in nutrient loading from existing development in that arm will not be necessary to achieve nutrient-related water quality standards. DENR must notify a county or municipality that the program must be developed and implemented if subsequent reports show that the standard has not been met. Provides for notice by DENR, rebuttal by the local government, approval of the program by the Commission, implementation timelines, and annual reporting. Prohibits the Commission from requiring additional or alternative measures that would require a local government to (1) install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped, (2) acquire developed private property, or (3) reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped. Allows for modification of the program to maintain only those measures necessary to prevent increases in nutrient loading from existing development, subject to the Commission's approval. Requires DENR to establish a load reduction goal for existing development for each municipality and county required to implement a Stage 2 adaptive management program. Specifies goals and methods of calculating the baseline load.

Additional Measures to Reduce Nitrogen Loading from Existing Development in the Upper New Hope Creek Arm of the Jordan Reservoir. If the March 1, 2026, report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir shows that nutrient-related water quality standards are not being achieved, a municipality or county located in that area is required to modify its Stage 2 adaptive management program to achieve additional reductions with a total reduction of 35% relative to the baseline period 1997 through 2001. Provides that the process, timelines, and standards set out for the Stage 2 adaptive management program apply to this provision. Allows the Commission to initiate alternate regulatory actions at the request of one or more affected local governments, including the granting of a variance and the establishment of alternate water quality standards for the Upper New Hope Creek Arm.

Allows local governments subject to regulation under the act to establish collective programs. Directs DENR to enforce the provisions of the act and requires the Division of Water Quality to report annually to the Commission on the implementation of the programs. The Commission must adopt a rule that is substantively identical to the act's requirements. Provides that rules adopted pursuant to Section 2 of the bill are not subject to GS 150B-21.9 through GS 150B-21.14. Provides that these adopted rules become effective as provided in GS 150B-21.3(b1) as though 10 or more written objections had been received.

Directs the Secretary of Environment and Natural Resources (Secretary) to establish the Nutrient Sensitive Waters Scientific Advisory Board (Scientific Advisory Board), consisting of 5 to 10 members, by July 1, 2010. Provides for the composition of the Scientific Advisory Board. Requires that the Scientific Advisory Board, by July 1, 2012, (1) identify management strategies that can be used by local government to reduce nutrient loading from existing development; (2) evaluate the feasibility, costs, and benefits of implementing the identified management strategies; (3) develop an accounting system for assignment of nutrient reduction credits for the identified management strategies; and (4) identify the need for any improvements or refinements to modeling and other analytical tools used to evaluate water quality in nutrient-impaired waters and

nutrient management strategies. Requires the Scientific Advisory Board to report to the Secretary by July 1 of each year concerning its activities, findings, and recommendations.

Allows local governments to implement a more restrictive program than set forth in the act. Specifies that the act does not authorize a local government to impose stormwater management requirements on lands in agriculture and forestry. Provides for the construction of the act and statute annotations where appropriate.

May 11, 2009

H 239. RESTORE WATER QUALITY IN JORDAN RESERVOIR. Filed 2/19/09. House committee substitute makes the following changes to 2nd edition. Applies Stage 2 adaptive management provisions in 2nd edition only to the Haw River Arm and Lower New Hope Creek Arm of Jordan Reservoir, and adds separate provision applying to the Upper New Hope Creek Arm based on the March 1, 2014, report and subsequent monitoring reports. Requires the Department of Environment and Natural Resources to submit a model Stage 2 adaptive management program by July 1, 2013 (was, December 31, 2014) and requires commission to approve a final model program by December 31, 2013 (was, December 31, 2015). Begins the provisions for additional measures and modified Stage 2 adaptive management programs for the Upper New Hope Creek Arm based on the March 1, 2023 (was, March 1, 2026) and subsequent monitoring reports, and deletes provision for requests by local governments for alternative regulatory actions. Adds provision that nothing in the act limits, expands, or modifies the Environmental Management Commission's authority to undertake authorized alternative regulatory actions.

June 9, 2009

H 239. RESTORE WATER QUALITY IN JORDAN RESERVOIR. Filed 2/19/09. Senate committee substitute makes the following changes to 3rd edition. Deletes the definition of *Division*. Clarifies in Section 3(d) that development and implementation of Stage 2 adaptive management programs to control nutrient loading from existing development applies to a subwatershed (was, arm of Jordan Reservoir). Also provides that the load reduction goal for existing development established by the Department of Environment and Natural Resources (DENR) for each municipality and county required to implement a Stage 2 adaptive management program is to be designed to achieve, *relative to the baseline period 1997 through 2001*, an 8% reduction in nitrogen loading and a 5% reduction in phosphorus loading (was, specified that the reductions were in nitrogen and phosphorus loading of the surface water from existing development) reaching Jordan Reservoir from existing developed lands within the police power jurisdiction of the local government (was, within the municipal limits or county boundary). Also replaces local planning jurisdiction with the police power jurisdiction of the local government, where applicable. Clarifies that the baseline load may also be calculated using an equivalent or more accurate method acceptable to DENR (was, Division of Water Quality). Also makes a technical change. Adds in Section 3(e) that the model Stage 2 adaptive management program required to be submitted by DENR to the Environmental Management Commission must provide that a local government may obtain additional or alternative load-reduction credits based on site-specific monitoring data.

July 1, 2009

SL 2009-216 (H 239). RESTORE WATER QUALITY IN JORDAN RESERVOIR. AN ACT TO PROVIDE FOR IMPROVEMENTS IN THE MANAGEMENT OF THE JORDAN WATERSHED IN ORDER TO RESTORE WATER QUALITY IN THE JORDAN RESERVOIR. Summarized in *Daily Bulletin* 5/6/09, 5/11/09, and 6/9/09. Enacted June 30, 2009. Effective June 30, 2009.